

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CIVIL ACTION
	:	(Criminal No. 93-394-01)
v.	:	
	:	
CRAIG B. SOKOLOW	:	98-764

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**MARCH , 2000**

Presently before the Court is a Motion for a Writ of Error Coram Nobis filed by Craig Sokolow (“Sokolow”) pursuant to 28 U.S.C. § 1651 (1994). He seeks post-conviction relief arguing his sentence was imposed in violation of the laws of the United States and the Constitution. Alternatively, he alleges he has newly discovered evidence tending to show his innocence. For the following reasons, Sokolow’s motion is denied.

**I. BACKGROUND**

The facts of this case were succinctly set forth by Magistrate Judge Thomas J. Rueter in his Report and Recommendation regarding Sokolow’s previous motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct sentence. The Court accordingly incorporates by reference the background of this case as set forth therein.

**II. DISCUSSION**

**A. Propriety of Petition for Error Coram Nobis**

Sokolow labels his motion as a petition for writ of error coram nobis. It appears, however, that his petition is nothing more than a second or successive post-conviction motion. While a petition for error coram nobis is available to federal courts in criminal cases pursuant to the All Writs Act, 28 U.S.C. § 1651(a), “it is used to attack allegedly invalid convictions which

have continuing consequences, when the petitioner has served his sentence and is no longer ‘in custody’ for purposes of 28 U.S.C. § 2255.” United States v. Stoneman, 870 F.2d 102, 105-06 (3d Cir. 1989) (citing United States v. Morgan, 346 U.S. 502, 512-13 (1954)); see United States v. DeJesus, No. Crim. 96-434-03, 2000 WL 217520, at \*2 (E.D. Pa. Feb. 11, 2000) (noting that “the writ of coram nobis is available only where the defendant has completely served his sentence”). Sokolow is currently incarcerated at Federal Correctional Institution - Schuylkill, located in Minersville, Pennsylvania, under sentence imposed by this Court. See 28 U.S.C. § 2255. Clearly, then, Sokolow is “in custody” for the purposes of § 2255. Further, the All Writs Act is a residual source of authority, conferring upon the district courts the power to issue writs that are not otherwise covered by statute. See Carlisle v. United States, 517 U.S. 416, 428-29 (1996). “Where a statute specifically addresses the particular issue at hand,” such as § 2255 does in the instant case, “it is that authority, and not the All Writs Act, that is controlling.” See id. Finally, “[t]he writ of coram nobis may not be used to circumvent the clear congressional directive embodied in the ‘second or successive’ provisions of § 2255.” United States v. Barrett, 178 F.3d 34, 55 (1st Cir. 1999), cert. denied, 120 S. Ct. 1208 (2000); see DeJesus, 2000 WL 217520, at \*2.

As noted previously, Sokolow filed a motion pursuant to § 2255 to vacate, set aside or correct sentence. Magistrate Judge Rueter recommended that the motion be denied and by Memorandum and Order dated March 23, 1999, this Court approved and adopted Judge Rueter’s Report and Recommendation. Further, the Court denied Sokolow’s request for a certificate of appealability. Sokolow appealed the Court’s decision on his § 2255 motion and the parties briefed the issue of whether the circuit court should issue such a certificate. The Third Circuit

has not issued a certificate of appealability on Sokolow's § 2255 motion.

Therefore, the Court finds Sokolow's instant motion is improperly labeled as a petition for writ of error coram nobis and that it is a second or successive motion for post-conviction relief or alternatively a motion to reconsider the Court's decision regarding his § 2255 motion.<sup>1</sup>

**B. Second or Successive § 2255 Motion**

In enacting the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), Congress altered the method by which prisoners may obtain relief on a second or successive § 2255 motion. Pursuant to § 2244:

No . . . district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255."

28 U.S.C. § 2244(a). Section 2255 provides that in order for a district court to consider a second or successive motion, it must be certified by the court of appeals to contain either:

(1) [N]ewly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255. Accordingly, in order to bring a second or successive motion under § 2255, the petitioner must first apply to the court of appeals for authorization to proceed. Sokolow has not petitioned the Third Circuit for such authorization. As such, this Court is without power to

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<sup>1</sup> In his Supplemental Response to the Government's answer to his motion, Sokolow asserts that his motion is correctly proffered as a petition for "[t]he Writ of Error Corran [sic] Nobis and/or a petition for reconsideration of that portion of the § 2255 motion." Supplemental Response to Gov. Answer [sic] of Nov 1, 1999 to Writ of Error Corran [sic] Nobis, at 1.

hear his instant motion.

**C. Motion to Reconsider**

To the extent that the instant motion requests reconsideration of the Court's denial of Sokolow's § 2255 motion, his allegations of newly acquired evidence and an intervening change in the controlling law are more properly made in the appropriate motion to the court of appeals.

As such, the Court will not reach the merits of Sokolow's claims.

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**ORDER**

**AND NOW**, this        day of March, 2000, in consideration of the Petition for a Writ of Error Coram Nobis (Doc. No. 470) filed by Craig Sokolow (“Sokolow”), the supplement thereto (Doc. No. 469), the response of the Government, Sokolow’s Supplemental Response to the Government’s Answer deemed by this Court to be a Motion to Amend (Doc. No. 480), and all of the various responses thereto, it is ORDERED that the motion is DENIED.

BY THE COURT:

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JAMES McGIRR KELLY, J.